

ACT 198

S.B. NO. 2545

A Bill for an Act Relating to Intoxicating Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided[,] or brought in by patrons or guests, whether for compensation or not, or to which members of the public[,] or members of an organization[,] resort for food, refreshment, or entertainment[,] and who is not a licensee of the commission under this chapter, to promote, encourage, aid, or permit the consumption of liquor on the premises, except during the hours between ~~[which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.]~~ 6:00 a.m. and 12:00 a.m. Any premises that desires to operate after 12:00 a.m. until 2:00 a.m. shall obtain a class 17 liquor license under section 281-31(q), and shall be subject to the requirements of this chapter and the rules adopted by the liquor commission of the county in

which the premises are located during all hours of operation, except as otherwise provided by law.”

SECTION 2. Section 281-31, Hawaii Revised Statutes, is amended to read as follows:

“§281-31 Licenses, classes. (a) Licenses may be granted by the liquor commission as provided in this section.

(b) Class 1. Manufacturer license. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption. Under this license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:

- (A) A standard bar; or
- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) Of this class, there shall be the following kinds:

- (A) General (includes all liquor except alcohol);
- (B) Beer and wine; and
- (C) Beer.

Notwithstanding section 281-57, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding a class 5 dispenser license who meets the requirements of a class 2 license.

(d) Class 3. Wholesale dealer license. A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees[,] or to others who are by law authorized to resell the liquor specified by the license but are not by law required to hold a license[, ~~the liquor therein specified~~]; provided

that ~~[samples of liquor may be sold]~~ a class 3 licensee may sell samples of liquor back to the manufacturer. Under ~~[the license,]~~ a class 3 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise ~~[as a common carrier, under]~~ subject to chapter 269[;] and engaged in regular flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealer license. A license to sell liquor at retail or to class 10 ~~[licenses]~~ licensees shall authorize the licensee to sell the liquor therein specified in their original packages. Under ~~[the license,]~~ a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
 - (2) Beer and wine; and
 - (3) Alcohol.
- (f) Class 5. Dispenser license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) A standard bar;
- (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (C) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (D) Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

(2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) Of this class, there shall be the following kinds:

- (A) General (includes all liquor except alcohol);
- (B) Beer and wine; and
- (C) Beer.

(g) Class 6. Club license. A club license shall be general only ~~[(but~~ excluding] ~~shall exclude alcohol)]~~ and shall authorize the licensee to sell liquor to members of the club and to guests of the club enjoying the privileges of mem-

bership[;] for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor[; if] owned by the member[;] for the member's own personal use and not to be sold [and] that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public only pursuant to commission rules.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(h) Class 8. Transient vessel license. A general license may be granted to the owner of any vessel for the sale of liquor [(other than alcohol)] on board the vessel while en route within the jurisdictional limits of the State and within any port of the State. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(i) Class 9. Tour or cruise vessel license. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor [(other than alcohol)] on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the county where the license has been issued. The license shall be issuable in the county [wherein] where the home port of the vessel is situated. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State, it shall constitute a violation of this chapter.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(j) Class 10. Special license. A special license may be granted for the sale of liquor for a period not to exceed three days and pursuant to commission rule may be approved by the administrator for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Beer.

[Under this license, the liquor therein specified] Liquor sold under a class 10 license shall be consumed on the premises.

(k) Class 11. Cabaret license. A cabaret license shall be general only [(but [excluding] shall exclude alcohol)] and shall authorize the sale of liquor for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons including a dance floor are provided, [~~including a dance floor;~~] and live or amplified recorded music or professional entertainment[;] except professional entertainment by a person who performs or entertains unclothed[;] is provided for the patrons; provided that

professional entertainment by persons who perform or entertain unclothed shall be authorized by:

- (1) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
- (2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except [~~when the transferee obtains~~] upon approval [~~from~~] by the liquor commission[~~;~~] and pursuant to rules adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

(l) Class 12. Hotel license. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor[~~;~~] except alcohol[~~;~~] for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor[~~;~~] if the catering activity is directly related to the licensee's food service.

Procedures such as room service, self-service [~~{no-host}~~], minibars or similar service in guest rooms, and service at parties in areas that are the property of and contiguous to the hotel[~~;~~] are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.

Any licensee holding a class 12 license on May 1, 2007[~~;~~ and] who would otherwise [~~come within this class of~~] qualify for a class 15 license may apply to the liquor commission of the county in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60.

If a licensee holding a class 12 license on May 1, 2007[~~;~~] applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice[~~;~~ and upon]. On the day of hearing[~~;~~] or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

(m) Class 13. Caterer license. A general license may be granted to any applicant who serves food as part of their operation for the sale of liquor [~~{other than alcohol}~~] while performing food catering functions off the premises.

No catering service for the sale of liquor shall be performed off the licensee's premises[~~;~~] unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(n) Class 14. Brewpub license. A brewpub licensee:

- (1) Shall manufacture not more than ~~ten~~ thirty thousand barrels of malt beverages on the licensee's premises during the license year;
- (2) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
- (4) May sell intoxicating liquor~~;~~ purchased from a class 1 manufacturer licensee~~;~~ or a class 3 wholesale dealer licensee~~;~~ to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass container, not to exceed one half-gallon, which shall be securely sealed;
- (6) May sell malt beverages manufactured on the licensee's premises ~~to consumers;~~ in recyclable containers ~~that may be~~ provided by the licensee or by the consumer~~, not to~~ which do not exceed one gallon per container~~—which~~ and are securely sealed on the licensee's premises~~;~~ to consumers for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages; ~~and~~
- (8) May sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, ~~and~~ class 14 brewpub licensees, class 15 condominium hotel licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees~~;~~; and
- (9) May conduct the activities under paragraphs (1) to (8) at one location other than the licensee's premises; provided that:
 - (A) The manufacturing takes place in Hawaii; and
 - (B) The other location is properly licensed under the same ownership.

(o) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor~~;~~ except alcohol~~;~~ for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee's operation as a condominium hotel.

Procedures such as room service, self-service ~~[no-host];~~ minibars or similar service in apartments, and service at private parties in areas that are the property of and contiguous to the condominium hotel~~;~~ are permitted with commission approval.

A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail [~~dealer~~] license.

Any licensee who would otherwise [~~fall within~~] meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

- (p) Class 16. Winery license. A winery licensee:
 - (1) Shall manufacture not more than ten thousand barrels of wine on the licensee's premises during the license year;
 - (2) May sell wine manufactured on the licensee's premises for consumption on the premises;
 - (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
 - (4) May sell wine manufactured on the licensee's premises [~~to consumers~~] in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container[;] not to exceed one half-gallon, which may be securely sealed;
 - (5) May sell wine manufactured on the licensee's premises [~~to consumers~~;] in recyclable containers [~~that may be~~] provided by the licensee or by the consumer[; ~~not to~~] which do not exceed one gallon per container[; ~~which~~] and are securely sealed on the licensee's premises[;] to consumers for off-premises consumption;
 - (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; and
 - (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, and class 15 condominium hotel licensees[;] pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees.

(q) Class 17. Bring-your-own-beverage license. In counties having a population in excess of 500,000, there is established a class 17 license; provided that in a county having a population of 500,000 or less, the respective commission may establish a class 17 license to which this subsection shall apply.

- (1) A general license of this class shall authorize the licensee to permit patrons to bring their own liquors for consumption on the premises between the hours of 6:00 a.m. to 2:00 a.m. the following day. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:
 - (A) Premises in which recorded music and live entertainment, including karaoke, are provided; or
 - (B) Premises in which recorded music and live entertainment, including karaoke and dancing, are provided.
- (2) If a licensee under this class desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) A licensee under this class shall not be subject to liquor commission rules relating to percentage fees.

~~[(q)] (r)~~ Restaurants, retailers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, ~~[and] condominium hotels, and bring-your-own-beverage establishments~~ licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, ~~[and] class 15, and class 17~~ shall maintain at all times liquor liability insurance coverage in an amount ~~[of] not less than \$1,000,000[-]; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount.~~ Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license[-] or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

For purposes of this subsection:

"Convenience minimarts" commonly refer to a neighborhood "mom and pop store".

~~[(r)] (s)~~ It shall be unlawful for any retail licensee[-] except a class 10 licensee[-] to purchase[-] or acquire[-] or sell liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

~~[(s)] (t)~~ Any provision to the contrary notwithstanding, ~~[at the discretion of the county liquor commission, permission may be granted to a bona fide hotel, restaurant, or club licensed under class 2, class 6, class 11, class 12, class 14, class 15, or class 16 to allow] a patron [to] may~~ remove from ~~[the] any class of licensed premises any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee engaged in meal service~~ for consumption with a meal; provided that it is recorked or resealed in its original container. ~~[This subsection applies only to a valid holder of a class 2, class 6, class 11, class 12, class 14, class 15, or class 16 license engaged in meal service.]~~

~~[(t)] (u)~~ Sections 281-57 to 281-60 shall not apply to classes 8 ~~[through], 9, 10, and 13."~~

SECTION 3. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

"§281-45 No license issued, when. No license shall be issued under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned ~~[(except], or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the [organization's] corporation's officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons to have a license[-], or to any other person not deemed by the commission to be a fit and proper person to have a license];~~
- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or to a general partnership, limited partnership, limited liability partner-

ship, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under paragraph (1) from obtaining the license individually;

- (3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation and the Internal Revenue Service for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement; or
- (4) To an applicant for a class 2, class 4~~[-]~~ except for convenience mini-marts, class 5, class 6, class 11, class 12, class 13, class 14, ~~or~~ class 15, or class 17 license¹ unless the applicant for issuance of a license or renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000; or
- (5) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter.”

SECTION 4. Section 281-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commission or board shall deny renewal of a class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, ~~or~~ class 15, or class 17 license if the applicant for renewal fails to present proof of the liquor liability insurance required by section ~~[281-31(e)-]~~ 281-31(r).”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Prior to amendment a comma appeared here.